

APPENDIX B-5

STANDARD TERMS AND CONDITIONS FOR FIRM FIXED PRICE SUBCONTRACTS FOR ARCHITECT-ENGINEERING SERVICES

**APPENDIX B-5
INDEX**

<u>CLAUSE</u>	<u>TITLE</u>	<u>PAGE</u>
1	PROHIBITION OF ASSIGNMENT (SPECIAL) (APR 1997)	1
2	DISPUTES (SPECIAL) (APR 1997)	1
3	YEAR 2000 CERTIFICATION AND WARRANTY OF INFORMATION TECHNOLOGY PRODUCTS AND SERVICES (SPECIAL)(FEB 1999) (Applies to subcontracts and purchase orders for information technology products or services)	2
4	DEFINITIONS (SPECIAL) (JUL 1998) Derived from FAR 52-202-1 (Oct 1995)	3
5	RESTRICTIONS ON LOWER-TIER SUBCONTRACTOR SALES TO NREL/GOVERNMENT (JUL 1995) Derived from FAR 52.203-6 (Applies to subcontracts exceeding \$100,000)	5
6	ANTI-KICKBACK PROCEDURES (JUL 1995) Derived from FAR 52.203-7 (FD) (Applies to subcontracts exceeding \$100,000)	6
7	LIMITATION OF PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997) Derived from FAR 52.203-12 (Applies to subcontracts exceeding \$100,000)	7
8	AUDIT AND RECORDS -- NEGOTIATION (JUN 1999) Derived from FAR 52.215-2 (FD) (Applies to subcontracts exceeding \$100,000) (Use Alternate II of this clause for Cost-reimbursement subcontracts with State and Local Governments, educational institutions, and other nonprofit organizations)	13
9	UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 1999) Derived from FAR 52.219-8 (FD) (Applies to subcontracts exceeding \$100,000)	15
10	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT -- OVERTIME COMPENSATION (JUL 1995) Derived from FAR 52.222-4 (FD) (Applies to subcontracts exceeding \$100,000 that require or involve the employment of laborers or mechanics)	16

**APPENDIX B-5
INDEX**

<u>CLAUSE</u>	<u>TITLE</u>	<u>PAGE</u>
11	WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996) <i>Derived from FAR 52.222-20</i> <i>(Applies to subcontracts for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000) ...</i>	18
12	EQUAL OPPORTUNITY (FEB 1999) <i>Derived from FAR 52.222-26 (FD)</i>	18
13	AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998) <i>Derived from FAR 52.222-35 (FD)</i> <i>(Applies to subcontracts exceeding \$10,000)</i>	19
14	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998) <i>Derived from AR 52.222-36</i> <i>(Applies to subcontracts exceeding \$10,000)</i>	22
15	EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999) <i>Derived from FAR 52.222-37</i> <i>(Applies to subcontracts exceeding \$10,000)</i>	23
16	AUTHORIZATION AND CONSENT (JUL 1995) <i>Derived from FAR 52.227-1 (FD)</i>	24
17	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996) <i>Derived from FAR 52.227-2</i> <i>(Applies to construction, research, development, or demonstration, subcontracts exceeding \$100,000</i>	26
18	INSURANCE -- WORK ON A GOVERNMENT INSTALLATION (SPECIAL MAY 1999) <i>Derived from FAR 52.228-5</i> <i>(Applies to fixed price subcontracts exceeding \$100,000; where the work is to be performed on a Government Installation or Government Property is included in the subcontract.)</i>	26

**APPENDIX B-5
INDEX**

<u>CLAUSE</u>	<u>TITLE</u>	<u>PAGE</u>
19	FEDERAL, STATE, AND LOCAL TAXES (COMPETITIVE SUBCONTRACT) (JAN 1991) <i>Derived from FAR 52.229-3</i> <i>(Applies to fixed price subcontracts exceeding \$100,000)</i>	27
20	FEDERAL, STATE, AND LOCAL TAXES (NONCOMPETITIVE SUBCONTRACT) (JAN 1991) <i>Derived from FAR 52.229-4</i> <i>(Applies to fixed price subcontracts exceeding \$100,000</i>	28
21	TAXES -- SUBCONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO (APR 1984) <i>Derived from FAR 52.229-5</i>	30
22	TAXES -- FOREIGN FIXED PRICE SUBCONTRACTS (JAN 1991) <i>Derived from FAR 52.229-6</i> <i>(Applies to subcontracts exceeding \$100,000)</i>	30
23	DESIGN WITHIN FUNDING LIMITATIONS (APR 1984) <i>Derived from FAR 52.236-22</i> <i>(Applies to architect-engineer subcontracts)</i>	32
24	RESPONSIBILITY OF THE ARCHITECT-ENGINEER SUBCONTRACTOR (APR 1984) <i>Derived from FAR 52.236-23</i> <i>(Applies to architect-engineer subcontracts)</i>	32
25	WORK OVERSIGHT IN ARCHITECT-ENGINEER SUBCONTRACTS (APR 1984) <i>Derived from FAR 52.236.24</i> <i>(Applies to architect-engineer subcontracts)</i>	33
26	REQUIREMENTS FOR REGISTRATION OF DESIGNERS (APR 1984) <i>Derived from FAR 52.236-25</i> <i>(Applies to architect-engineer subcontracts)</i>	33
27	BANKRUPTCY (JUL 1995) <i>Derived from FAR 52.242-13</i> <i>(Applies to subcontracts exceeding \$100,000)</i>	33
28	SUSPENSION OF WORK (APR 1984) <i>Derived from FAR 52.242-14</i> <i>(Applies to construction and architect-engineer subcontracts)</i>	33

**APPENDIX B-5
INDEX**

<u>CLAUSE</u>	<u>TITLE</u>	<u>PAGE</u>
29	CHANGES - FIXED PRICE (AUG 1987) <i>Derived from FAR 52.243-1</i>	34
30	LOWER-TIER SUBCONTRACTS AND OUTSIDE ASSOCIATES AND CONSULTANTS (ARCHITECT-ENGINEER SERVICES) (AUG 1998) <i>Derived from FAR 52.244-4</i>	37
31	SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998) <i>Derived from FAR 52.244-6</i> <i>(Applies to solicitations and subcontracts for supplies or services other than</i> <i>commercial items)</i>	37
32	PREFERENCE FOR U.S. - FLAG AIR CARRIERS (JAN 1997) <i>Derived from FAR 52.247-63 (FD)</i>	38
33	TERMINATION (FIXED PRICE ARCHITECT-ENGINEER) (APR 1984) <i>Derived from FAR 52.249-7 (FD)</i>	39
34	DEFAULT (FIXED PRICE SUPPLY AND SERVICE) (APR 1984) <i>Derived from FAR 52.249-8 (FD)</i>	39
35	REFUND OF ROYALTIES (FEB 1995) <i>Derived from DEAR 952.227-9 (FD)</i>	41
36	INSPECTION IN ARCHITECT-ENGINEER SUBCONTRACTS (APR 1994) <i>Derived from FAR 952.236-71</i> <i>(Applies to architect-engineer subcontracts)</i>	42
37	FOREIGN TRAVEL (FEB 1997) <i>Derived from DEAR 952.247-70 (FD)</i>	42
38	INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (JUN 1997) <i>Derived from DEAR 970.5204-2 (FD)</i> <i>(Applies to subcontracts that involve complex or hazardous work that is to be</i> <i>performed on a Government-owned or -leased facility.)</i>	43
39	ACCOUNTS, RECORDS, AND INSPECTION (JUN 1996) <i>Derived from DEAR 970.5204-9 (FD)</i>	45
40	PRINTING CLAUSE FOR SUBCONTRACTS (APR 1984) <i>Derived from DEAR 970.5204-19 (FD)</i>	47

**APPENDIX B-5
INDEX**

<u>CLAUSE</u>	<u>TITLE</u>	<u>PAGE</u>
41	PERMITS OR LICENSES (APR 1984) <i>Derived from DEAR 970.5204-29</i>	47
42	ACCESS SECURITY (SPECIAL)(APR 1999)	47

CLAUSES

CLAUSE 1 - PROHIBITION OF ASSIGNMENT (SPECIAL) (APR 1997)

- A. Neither this subcontract nor any interest therein nor claim thereunder shall be assigned or transferred by the Subcontractor except as expressly authorized in writing by the NREL Subcontract Administrator.
- B. When directed by DOE, the NREL Division of Midwest Research Institute may assign all its rights and obligations under this subcontract to DOE or its designee.

CLAUSE 2 - DISPUTES (SPECIAL) (APR 1997)

- A. The parties agree that the appropriate forum for resolution of any dispute or claim pertaining to this subcontract shall be a court of competent jurisdiction as follows:
 - 1. Subject to paragraph (A)(2) of this clause, any such litigation shall be brought and prosecuted exclusively in Federal District Court; with venue in the United States District Court of Colorado in Denver, Colorado.
 - 2. Provided, however, that in the event that the requirements for jurisdiction in any Federal District Court are not presented, such litigation shall be brought in a court of competent jurisdiction in the county of Jefferson and State of Colorado.
- B. Any substantive issue of law in such dispute, claim, or litigation shall be determined in accordance with the body of applicable Federal law relating to the interpretation and application of clauses derived from Federal Acquisition Regulations. If there is no applicable Federal law, the law of the State of Colorado shall apply in the determination of such issues. Nothing in this clause shall grant to the Subcontractor by implication any statutory rights or remedies not expressly set forth in this subcontract.
- C. There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this subcontract pending final resolution of any dispute, claim, or litigation arising under or related to this subcontract between the parties hereto or between the Subcontractor and lower-tier subcontractors or suppliers.
- D. The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this subcontract; provided, however, that nothing in this clause shall prohibit NREL, in its sole discretion, from sponsoring a claim of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that NREL so sponsors a claim at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as NREL.
- E. Any disputes relative to intellectual property matters will be governed by other provisions of this subcontract.

CLAUSE 3 - YEAR 2000 CERTIFICATION AND WARRANTY OF INFORMATION TECHNOLOGY PRODUCTS AND SERVICES (SPECIAL)(FEB 1999)

(Applies to subcontracts for information technology products or services)

A. Definitions

1. "Year 2000 Compliance," as used in this clause, means that the information technology products and services delivered or developed under this subcontract accurately process date/time data from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, and leap year calculations, to the extent that other information technology, used in combination with the information technology being delivered or developed under this subcontract, properly exchanges date/time data with it.
2. "Information technology products and services" as used in this clause, include, but are not limited to, hardware, software, and/or firmware and embedded systems or any other electro-mechanical or processor-based systems or services.
3. "Date/time data," as used in this clause, includes but is not limited to, calculating, comparing, and sequencing.

B. Certification

The delivery or development of information technology products or services by the Subcontractor/Supplier shall constitute constructive certification that the information technology products or services under this subcontract demonstrate Year 2000 Compliance.

C. Warranty

The Subcontractor/Supplier warrants that each commercial or noncommercial information technology product or service delivered or developed under this subcontract is Year 2000 Compliant. If the subcontract requires that specific information technology products or services must perform as a system in accordance with the foregoing warranty, then this warranty shall apply to those products or services as a system.

D. Duration and Remedies

The duration of this warranty and the remedies available to NREL/Government for breach of this warranty shall be as defined in, and subject to: 1) the terms and limitations of the general warranty provisions of this subcontract; or, 2) the terms and limitations of the Subcontractor's/Supplier's standard commercial warranty or warranties contained in this subcontract.

Notwithstanding any provision to the contrary in such warranty provision(s), or in the absence of any such warranty provision(s), the remedies available to NREL/Government under this Year 2000 Compliance warranty shall include repair or replacement, at no additional cost to NREL/Government, of any information technology product or service where noncompliance is discovered and made known to the Subcontractor/Supplier in writing within ninety (90) days after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies NREL/Government may otherwise have under this subcontract with respect to defects other than Year 2000 compliance.

E. Subcontractor/Supplier as Distributor

If the Subcontractor/Supplier is a distributor of technology information products obtained from third party manufacturers, the Subcontractor/Supplier agrees to obtain from the third party manufacturers certifications and warranties that substantially conform to the requirements of this clause.

F. Lower-tier Subcontracts

The Subcontractor/Supplier agrees to insert terms that conform substantially to the language of this clause, including this paragraph F, in all lower-tier subcontracts/purchase orders under this subcontract.

CLAUSE 4 - DEFINITIONS (SPECIAL) (JUL 1998)

Derived from FAR 52.202-1 (OCT 1995)

- A. "Head of the agency" also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency; and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.
- B. "Commercial component" means any component that is a commercial item.
- C. "Commercial item" means --
 - 1. Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that --
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public;
 - 2. Any item that evolved from an item described in paragraph (C)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a government solicitation;
 - 3. Any item that would satisfy a criterion expressed in paragraphs (C)(1) or (C)(2) of this clause, but for --
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in

determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

4. Any combination of items meeting the requirements of paragraphs (C)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;
 5. Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (C)(1), (2), (3), or (4) of this clause, and if the source of such services --
 - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
 - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
 6. Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
 7. Any item, combination of items, or service referred to in subparagraphs (C)(1) through (C)(6), notwithstanding the fact that the item, combination or items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of the subcontractor; or
 8. A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and Local Governments.
- D. "Component" means any item supplied to the Federal Government as part of an end item or of another component.
- E. "Nondevelopmental item" means --
1. Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local Government, or a foreign Government with which the United States has a mutual defense cooperation agreement;
 2. Any item described in paragraph (E)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

3. Any item of supply being produced that does not meet the requirements of paragraph (E)(1) or (E)(2) solely because the item is not yet in use.
- F. "DOE Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the DOE Contracting Officer acting within the limits of their authority as delegated by the DOE Contracting Officer.
- G. Except as otherwise provided in this subcontract, the term "lower-tier subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this subcontract.
- H. The term "DOE" means the Department of Energy and "FERC" means the Federal Energy Regulatory Commission.
- I. The term "NREL" means the National Renewable Energy Laboratory Division of the Midwest Research Institute, a not-for-profit Missouri Corporation, and includes its successors and assigns of the NREL Division of Midwest Research Institute. The NREL facility is a Department of Energy-owned national laboratory, operated and managed under Contract No. DE-AC36-98-GO10337 by the NREL Division of the Midwest Research Institute.
- J. The term "Subcontractor" as used herein includes lower-tier subcontractors, independent contractors, and all other classes of persons performing any type of work under this subcontract.

**CLAUSE 5 - RESTRICTIONS ON LOWER-TIER SUBCONTRACTOR SALES
TO NREL/GOVERNMENT (JUL 1995)**

Derived from FAR 52.203-6

(Applies to subcontracts exceeding \$100,000)

- A. Except as provided in (B) of this clause, the Subcontractor shall not enter into any agreement with an actual or prospective lower-tier subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such lower-tier subcontractors directly to NREL/Government of any item or process (including computer software) made or furnished by the lower-tier subcontractor under this subcontract or under any follow-on production subcontract.
- B. The prohibition in (A) of this clause does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.
- C. The Subcontractor agrees to incorporate the substance of this clause, including this paragraph (C), in all lower-tier subcontracts under this subcontract which exceed \$100,000.

CLAUSE 6 - ANTI-KICKBACK PROCEDURES (JUL 1995)

Derived from FAR 52.203-7 (FD)

(Applies to subcontracts exceeding \$100,000)

A. Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any Prime Contractor, Prime Contractor employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a Prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a Prime Contractor or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the Prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the Prime Contractor or a higher-tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a Subcontractor.

B. The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from --

1. Providing or attempting to provide or offering to provide any kickback;
2. Soliciting, accepting, or attempting to accept any kickback; or
3. Including, directly or indirectly, the amount of any kickback in the contract price charged by a Prime Contractor to the United States or in the contract price charged by a Subcontractor to a Prime Contractor or higher-tier subcontractor.

- C.
1. The Subcontractor shall have in place and follow reasonable procedures designed to prevent and detect violations described in paragraph (B) of this clause in its own operations and direct business relationships.
 2. When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (B) of this clause may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the DOE inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
 3. The Subcontractor shall cooperate fully with any Federal agency and/or NREL investigating a possible violation described in paragraph (B) of this clause.
 4. The DOE Contracting Officer may --
 - (i) Offset the amount of the kickback against any monies owed by NREL under this subcontract and/or
 - (ii) Direct that the Subcontractor withhold from sums owed the lower-tier subcontractor the amount of the kickback. The DOE Contracting Officer may order that monies withheld under subdivision (C)(4)(ii) of this clause be paid over to NREL or the Government unless NREL or the Government has already offset those monies under subdivision (C)(4)(i) of this clause. In either case, the Subcontractor shall notify the NREL Subcontract Administrator when the monies are withheld.
 5. The Subcontractor agrees to incorporate the substance of this clause, including subparagraph (C)(5) but excepting subparagraph (C)(1), in all lower-tier subcontracts under this subcontract which exceed \$100,000.

**CLAUSE 7 - LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN
FEDERAL TRANSACTIONS (JUN 1997)**

Derived from FAR 52-203-12

(Applies to subcontracts exceeding \$100,000)

A. Definitions.

"Agency," as used in this clause, means executive agency as defined in FAR 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

1. The awarding of any Federal contract.
2. The making of any Federal grant.
3. The making of any Federal loan.

4. The entering into of any cooperative agreement.
5. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local Government," as used in this clause, means a unit of Government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a Local Government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

1. An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
2. A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
3. A special Government employee, as defined in section 202, Title 18, United States Code.
4. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and Local Government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Subcontractor and all lower-tier subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred and thirty (130) working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

B. Prohibitions.

1. Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
2. The Act also requires Subcontractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
3. The prohibitions of the Act do not apply under the following conditions:
 - (i) Agency and legislative liaison by own employees.
 - a. The prohibition on the use of appropriated funds, in subparagraph (B)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

- b. For purposes of subdivision (B)(3)(i)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
- c. The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:
 - 1. Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
 - 2. Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- d. The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action --
 - 1. Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - 2. Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - 3. Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub.L.95-507, and subsequent amendments.
- e. Only those services expressly authorized by subdivision (B)(3)(i)(a) of this clause are permitted under this clause.

(ii) Professional and technical services.

- a. The prohibition on the use of appropriated funds, in subparagraph (B)(1) of this clause, does not apply in the case of --
 - 1. A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

2. Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- b. For purposes of subdivision (B)(3)(ii)(a) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- c. Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- d. Only those services expressly authorized by subdivisions (B)(3)(ii)(a)(1) and (2) of this clause are permitted under this clause.
- e. The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

C. Disclosure.

1. The Subcontractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (B)(1) of this clause, if paid for with appropriated funds.
2. The Subcontractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (C)(1) of this clause. An event that materially affects the accuracy of the information reported includes--
 - (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
3. The Subcontractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
4. All lower-tier subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the Subcontractor. The Subcontractor shall submit all disclosures to the NREL Subcontract Administrator at the end of the calendar quarter in which the disclosure form is submitted by the Subcontractor. Each lower-tier subcontractor certification shall be retained in the subcontract file of the awarding Subcontractor.

D. Agreement.

The Subcontractor agrees not to make any payment prohibited by this clause.

E. Penalties.

1. Any person who makes an expenditure prohibited under paragraph (A) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (B) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
2. Subcontractors may rely without liability on the representation made by their lower-tier subcontractors in the certification and disclosure form.

F. Cost allowability.

Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

CLAUSE 8 - AUDIT AND RECORDS -- NEGOTIATION (JUN 1999)

Derived from FAR 52.215-2 (FD)

(Applies to subcontracts exceeding \$100,000) (Use Alternate II of this clause for Cost-reimbursement subcontracts with State and Local Governments, educational institutions, and other nonprofit organizations)

A. As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are written form, in the form of computer data, or in any other form.

B. Examination of Costs

If this a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable subcontract, or any combination of these, the Subcontractor shall maintain and the DOE Contracting Officer, or an authorized representative of the DOE Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or part of them, engaged in performing the subcontract.

C. Cost or pricing data

If the Subcontractor has been required to submit cost or pricing data in connection with any pricing action relating to this subcontract, the DOE Contracting Officer, or an authorized representative of the DOE Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computation and projections, related to --

1. The proposal for the subcontract, lower-tier subcontract, or modification;
2. The discussions conducted on the proposal(s), including those related to negotiating;
3. Pricing of the subcontract, lower-tier subcontract, or modification; or
4. Performance of the subcontract, lower-tier subcontract, or modification.

D. Comptroller General

1. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder.

2. This paragraph may not be construed to require the Subcontractor or lower-tier subcontractor to create or maintain any record that the Subcontractor or lower-tier subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

E. Reports

If the Subcontractor is required to furnish cost, funding, or performance reports, the DOE Contracting Officer or any authorized representative of the DOE Contracting Officer, shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating --

1. The effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports; and
2. The data reported.

F. Availability

The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (A), (B), (C), (D), and (E) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this subcontract or for any shorter period specified in Subpart 4.7, Subcontractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this subcontract. In addition--

1. If this subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement; and
2. Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this subcontract shall be made available until such appeals, litigation, or claims are finally resolved.

G. The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (G), in all lower-tier subcontracts under this subcontract that exceed the simplified acquisition threshold, and --

1. That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
2. For which cost or pricing data are required; or
3. That require the lower-tier subcontractor to furnish reports as discussed in paragraph (E) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the DOE Contracting Officer or NREL Subcontract Administrator under the Government prime contract.

Alternate II (JUN 1999)

(For Cost-reimbursement subcontracts with State and Local Governments, educational institutions, and other non-profit organizations, the following paragraph (H) shall be added.)

- H. The provisions of OMB Circular No. A-133, "Audits of States, Local Governments, and Non-profit Organizations," apply to this subcontract.

CLAUSE 9 - UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 1999)

Derived from FAR 52.219-8 (FD)

(Applies to subcontracts exceeding \$100,000)

- A. It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including subcontracts and lower-tier subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its Prime Contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their lower-tier subcontracts with small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.
- B. The Subcontractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Subcontractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Subcontractor's compliance with this clause.

- C. Definitions.

As used in this subcontract--

1. "Small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
2. "HUBZone small business concern" means a small business concern that appear on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
3. "Small business concern owned and controlled by socially and economically disadvantaged individuals" means an offeror that represents, as part of its offer, that-

- (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;
 - (ii) No material change in disadvantaged ownership and control has occurred since its certification;
 - (iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
 - (iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-NET).
- 4. "Small business concern owned and controlled by women" means a small business concern --
 - (i) Which is at least fifty one (51) percent owned by one or more women, or, in the case of any publicly owned business, at least fifty one (51) percent of the stock of which is owned by one or more women; and
 - (ii) Whose management and daily business operations are controlled by one or more women; and
- D. Subcontractors acting in good faith may rely on written representations by their lower-tier subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals or a small business concern owned and controlled by women.

**CLAUSE 10 - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT --
OVERTIME COMPENSATION (JUL 1995)**

Derived from FAR 52.222-4 (FD)

(Applies to subcontracts exceeding \$100,000 that require or involve the employment of laborers or mechanics)

A. Overtime requirements.

No Subcontractor or lower-tier subcontractor contracting for any part of the subcontract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of the provisions set forth in paragraph (A) of this clause, the Subcontractor and any lower-tier subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Subcontractor and lower-tier subcontractor shall be liable to the United States (in the case of work done under subcontract for the District of Columbia or a territory, to such District or to such territory), and/or NREL, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (A) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (A) of this clause.

C. Withholding for unpaid wages and liquidated damages.

The NREL Subcontract Administrator shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Subcontractor or lower-tier subcontractor under any such subcontract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Subcontractor or lower-tier subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (B) of this clause.

D. Payrolls and basic records.

1. The Subcontractor or lower-tier subcontractor shall maintain payrolls and basic payroll records during the course of subcontract work and shall preserve them for a period of three (3) years from the completion of the subcontract for all laborers and mechanics working on the subcontract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
2. The records to be maintained under paragraph (D)(1) of this clause shall be made available by the Subcontractor or lower-tier subcontractor for inspection, copying, or transcription by authorized representatives of Department of Energy, NREL, or the Department of Labor. The Subcontractor or lower-tier subcontractor shall permit such representatives to interview employees during working hours on the job.

E. Lower-tier Subcontracts.

The Subcontractor or lower-tier subcontractor shall insert in any lower-tier subcontracts exceeding \$100,000 the provisions set forth in paragraphs (A) through (E) of this clause and also a clause requiring the lower-tier subcontractors to include these provisions in any lower-tier subcontracts. The Subcontractor shall be responsible for compliance by any lower-tier subcontractor with the provisions set forth in paragraphs (A) through (E) of this clause.

CLAUSE 11 - WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)

Derived from FAR 52.222-20

(Applies to subcontracts for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000)

If this subcontract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C.35-45), the following terms and conditions apply:

(a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C.40).

CLAUSE 12 - EQUAL OPPORTUNITY (FEB 1999)

Derived from FAR 52.222-26 (FD)

- A. If, during any 12-month period (including the twelve (12) months preceding the award of this subcontract), the Subcontractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Subcontractor shall comply with subparagraphs B (1) through (11) below. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this clause.
- B. During performance of this subcontract, the Subcontractor agrees as follows:
1. The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Subcontractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
 2. The Subcontractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to,
 - (i) Employment,
 - (ii) Upgrading,
 - (iii) Demotion,
 - (iv) Transfer,
 - (v) Recruitment or recruitment advertising,
 - (vi) Layoff or termination,
 - (vii) Rates of pay or other forms of compensation, and
 - (viii) Selection for training, including apprenticeship.

3. The Subcontractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the NREL Subcontract Administrator that explain this clause.
 4. The Subcontractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
 5. The Subcontractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the NREL Subcontract Administrator advising the labor union or workers' representative of the Subcontractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
 6. The Subcontractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
 7. The Subcontractor shall furnish to NREL all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The subcontractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Subcontractor has filed within the 12 months preceding the date of contract award, the subcontractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
 8. The Subcontractor shall permit access to its premises, during normal business hours, by NREL/Government or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Subcontractor shall permit NREL/Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
 9. If the OFCCP determines that the Subcontractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Subcontractor may be declared ineligible for further NREL subcontracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Subcontractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
 10. The Subcontractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every lower-tier subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each lower-tier subcontractor or vendor.
 11. The Subcontractor shall take such action with respect to any lower-tier subcontract or purchase order as the NREL subcontract administrator may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Subcontractor becomes involved in, or is threatened with, litigation with a lower-tier subcontractor or vendor as a result of any direction, the Subcontractor may request the United States to enter into the litigation to protect the interests of the United States.
- C. Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1

CLAUSE 13 - AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)
Derived from FAR 52.222-35 (FD)
(Applies to subcontracts exceeding \$10,000)

- A. Definitions. As used in this clause --

"All employment openings" includes all positions except executive and top management, those positions that will be filled from within the Subcontractor's organization, and positions lasting three (3) days or less. This term includes full-time employment, temporary employment of more than three (3) days' duration, and part-time employment.

"Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Subcontractor's organization" means employment openings for which no consideration will be given to persons outside the Subcontractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Subcontractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Veteran of the Vietnam era" means a person who --

1. Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released there from with other than a dishonorable discharge; or
2. Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975.

B. General.

1. Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as --
 - (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion or transfer;
 - (iv) Recruitment;
 - (v) Advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

2. The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

C. Listing openings.

1. The Subcontractor agrees to list all employment openings existing at subcontract award or occurring during subcontract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Subcontractor facility, including one not connected with performing this subcontract. An independent corporate affiliate is exempt from this requirement.
2. State and Local Government agencies holding Federal contracts or subcontracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.
3. The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Subcontractor from any requirements of Executive Orders or regulations concerning nondiscrimination in employment.
4. Whenever the Subcontractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Subcontractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts/subcontracts. The Subcontractor may advise the State system when it is no longer bound by this subcontract clause.

D. Applicability.

1. This clause does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

E. Postings.

1. The Subcontractor agrees to post employment notices stating
 - (i) The Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and

- (ii) The rights of applicants and employees.
 - 2. These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the NREL Subcontract Administrator.
 - 3. The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.
- F. Noncompliance.
- If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- G. Lower-tier Subcontracts.
- The Subcontractor shall include the terms of this clause in every lower-tier subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

CLAUSE 14 - AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)
Derived from FAR 52.222-36 (FD)
(Applies to subcontracts exceeding \$10,000)

- A. General.
- 1. Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against any employee or applicant because of physical or mental disability. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as --
 - (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (iii) Rates of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;

- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
 - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Subcontractor, including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
 - 2. The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C.793) (the Act), as amended.
- B. Postings.
- 1. The Subcontractor agrees to post employment notices stating --
 - (i) The Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - (ii) The rights of applicants and employees.
 - 2. These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Subcontractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Subcontractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the DOE Contracting Officer.
 - 3. The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- C. Noncompliance.
- If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- D. Lower-tier Subcontracts.
- The Subcontractor shall include the terms of this clause in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**CLAUSE 15 - EMPLOYMENT REPORTS ON DISABLED VETERANS
AND VETERANS OF THE VIETNAM ERA (JAN 1999)**

Derived from FAR 52.222-37 (FD)

(Applies to subcontracts exceeding \$10,000)

- A. Unless the Subcontractor is a State or Local Government agency, the Subcontractor shall report at least annually, as required by the Secretary of Labor, on;
 - 1. The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the Subcontractor by job category and hiring location; and
 - 2. The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.
- B. The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- C. Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.
- D. The employment activity report required by paragraph (A)(2) of this clause shall reflect total hires during the most recent twelve (12)-month period as of the ending date selected for the employment profile report required by paragraph (A)(1) of this clause. Subcontractors may select an ending date:
 - 1. As of the end of any pay period during the period January through March 1st of the year the report is due, or
 - 2. As of December 31, if the Subcontractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- E. The count of veterans reported according to paragraph (A) of this clause shall be based on voluntary disclosure. Each Subcontractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Subcontractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- F. Lower-tier Subcontracts.

The Subcontractor shall include the terms of this clause in every lower-tier subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

CLAUSE 16 - AUTHORIZATION AND CONSENT (JUL 1995)
Derived from FAR 52-227-1 (FD)

- A. The Government authorizes and consents to all use and manufacture, in performing this subcontract or any subcontract at any tier, of any invention described in and covered by a United States patent

1. Embodied in the structure or composition of any article the delivery of which is accepted by the NREL/Government under this subcontract or;
 2. Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with--
 - (i) Specifications or written provisions forming a part of this subcontract or
 - (ii) Specific written instructions given by the Government working through NREL directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this subcontract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- B. The Subcontractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any lower-tier subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

ALTERNATE I (APR 1984)

Alternate I of this clause is applicable if this award is for the conduct of research, development, or demonstration

The following is substituted for paragraph (A) of the clause:

- A. The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this subcontract or any subcontract at any tier.

ALTERNATE II (APR 1984)

Alternate II of this clause is applicable if this award includes an order or lower-tier subcontract for communication services and facilities

The following is substituted for paragraph (A) of the clause:

- A. The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this subcontract for communication services and facilities for which rates, charges, and tariffs are not established by a Government regulatory body, of any invention described in and covered by a United States patent

1. Embodied in the structure or composition of any article the delivery of which is accepted by the Government through NREL under this subcontract or
2. Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with specifications or written provisions forming a part of this subcontract or with specific written instructions given by the DOE through NREL directing the manner of performance.

CLAUSE 17 - NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

Derived from FAR 52.227-2

(Applies to construction, research, development, or demonstration, subcontracts exceeding \$100,000)

- A. The Subcontractor shall report to the DOE through NREL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this subcontract of which the Subcontractor has knowledge.
- B. In the event of any claim or suit against NREL/Government on account of any alleged patent or copyright infringement arising out of the performance of this subcontract or out of the use of any supplies furnished or work or services performed under this subcontract, the Subcontractor shall furnish to the Government, when requested by the DOE through NREL, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government.
- C. The Subcontractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer lower-tier subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

CLAUSE 18 - INSURANCE--WORK ON A GOVERNMENT INSTALLATION (SPECIAL - MAY 1999)

Derived from FAR 52.228-5

(Applies to fixed price subcontracts exceeding \$100,000; where the work is to be performed on a Government Installation or Government Property is included in the subcontract.)

- A. The Subcontractor shall, at its own expense, provide and maintain during the entire performance period of this subcontract at least the kinds and minimum amounts of insurance required in this clause.

Insurance Type	Bodily Injury		Property Damage
	Each Person	Each Occurrence	
Workers' Compensation	As required by law	As required by law	
Employer's Liability	\$100,000	\$100,000	
Comprehensive General Liability	\$500,000	\$500,000	\$100,000
Automobile Liability	\$200,000	\$500,000	\$20,000

- B. Before commencing work under this subcontract, the Subcontractor shall notify the NREL Subcontract Administrator in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting NREL's/Government's interest shall not be effective --
1. For such period as the laws of the State in which this subcontract is to be performed prescribe; or
 2. Until thirty (30) days after the insurer or the Subcontractor gives written notice to the NREL Subcontract Administrator, whichever period is longer.
- C. The Subcontractor shall insert the substance of this clause, including this paragraph (C), in lower-tier subcontracts under this subcontract that require work on a Government installation and shall require lower-tier subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the subcontract. The Subcontractor shall maintain a copy of all the lower-tier subcontractor's proofs of required insurance, and shall make copies available to the NREL Subcontract Administrator upon request.

CLAUSE 19 - FEDERAL, STATE, AND LOCAL TAXES (COMPETITIVE SUBCONTRACT) (JAN 1991)

Derived from FAR 52.229-3

(Applies to fixed price subcontracts exceeding \$100,000)

- A. "Subcontract date," as used in this clause, means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of this subcontract or modification.

"All applicable Federal, State, and Local taxes and duties," as used in this clause, means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract.

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the subcontract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

- B. The subcontract price includes all applicable Federal, State, and Local taxes and duties.
- C. The subcontract price shall be increased by the amount of any after-imposed Federal tax, provided the Subcontractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the subcontract price, as a contingency reserve or otherwise.
- D. The subcontract price shall be decreased by the amount of any after-relieved Federal tax.
- E. The subcontract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator.
- F. No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds \$250.
- G. The Subcontractor shall promptly notify the NREL Subcontract Administrator of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the NREL Subcontract Administrator directs.
- H. The Government through NREL shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or Local tax when the Subcontractor requests such evidence and a reasonable basis exists to sustain the exemption.

CLAUSE 20 - FEDERAL, STATE, AND LOCAL TAXES (NONCOMPETITIVE SUBCONTRACT) (JAN 1991)

Derived from FAR 52.229-4

(Applies to fixed price subcontracts exceeding \$100,000)

- A. "Subcontract date," as used in this clause, means the effective date of this subcontract and, for any modification to this subcontract, the effective date of the modification.

"All applicable Federal, State, and Local taxes and duties," as used in this clause, means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract.

"After-imposed tax," as used in this clause, means any new or increased Federal, State, or Local tax or duty, or tax that was excluded on the subcontract date but whose exclusion was later revoked or amount of exemption reduced during the subcontract period, other than an excepted tax,

on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

"After-relieved tax," as used in this clause, means any amount of Federal, State, or Local tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

"Excepted tax," as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this subcontract, or any tax assessed on the Subcontractor's possession of, interest in, or use of property, title to which is in the Government.

- B. Unless otherwise provided in this subcontract, the subcontract price includes all applicable Federal, State, and Local taxes and duties.
- C. The subcontract price shall be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the subcontract price by a term or condition of this subcontract that the Subcontractor is required to pay or bear, including any interest or penalty, if the Subcontractor states in writing that the subcontract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator.
- D. The subcontract price shall be decreased by the amount of any after-relieved tax. NREL/Government shall be entitled to interest received by the Subcontractor incident to a refund of taxes to the extent that such interest was earned after the Subcontractor was paid by NREL for such taxes. NREL/Government shall be entitled to repayment of any penalty refunded to the Subcontractor to the extent that the penalty was paid by NREL.
- E. The subcontract price shall be decreased by the amount of any Federal, State, or Local tax, other than an excepted tax, that was included in the subcontract price and that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator.
- F. No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds \$250.
- G. The Subcontractor shall promptly notify the NREL Subcontract Administrator of all matters relating to Federal, State, and Local taxes and duties that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the NREL Subcontract Administrator directs. The subcontract price shall be equitably adjusted to cover the costs of action taken by the Subcontractor at the direction of the NREL Subcontract Administrator, including any interest, penalty, and reasonable attorney's fees.

- H. The Government through NREL shall furnish evidence appropriate to establish exemption from any Federal, State, or Local tax when --
1. The Subcontractor requests such exemption and states in writing that it applies to a tax excluded from the subcontract price, and
 2. A reasonable basis exists to sustain the exemption.

CLAUSE 21 - TAXES -- SUBCONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO (APR 1984)

Derived from FAR 52.229-5

The term "Local Taxes," as used in the Federal, State, and Local taxes clause of this subcontract, includes taxes imposed by a possession of the United States or by Puerto Rico.

CLAUSE 22 - TAXES--FOREIGN FIXED PRICE SUBCONTRACTS (JAN 1991)

Derived from FAR 52.229-6

(Applies to subcontracts exceeding \$100,000)

- A. To the extent that this subcontract provides for furnishing supplies or performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and Local taxes clause of the subcontract.
- B. "Subcontract date," as used in this clause means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of this subcontract or modification.

"Country concerned," as used in this clause, means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this subcontract are made.

"Tax," and "taxes," as used in this clause, include fees and charges for doing business that are levied by the Government of the country concerned or by its political subdivisions.

"All applicable taxes and duties," as used in this clause, means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract, pursuant to written ruling or regulation in effect on the subcontract date.

"After-imposed tax," as used in this clause, means any new or increased tax or duty, or tax that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period, other than excepted tax, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

"After-relieved tax," as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by

this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

"Excepted tax," as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this subcontract, or any tax assessed on the Subcontractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

- C. Unless otherwise provided in this subcontract, the subcontract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the Government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.
- D. The subcontract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the subcontract price by a provision of this subcontract that the Subcontractor is required to pay or bear, including any interest or penalty, if the Subcontractor states in writing that the subcontract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator or to comply with the provisions of paragraph (I) below.
- E. The subcontract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States/NREL shall be entitled to interest received by the Subcontractor incident to a refund of taxes to the extent that such interest was earned after the Subcontractor was paid by NREL for such taxes. The Government of the United States/NREL shall be entitled to repayment of any penalty refunded to the Subcontractor to the extent that the penalty was paid by NREL.
- F. The subcontract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the subcontract and that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator or to comply with the provisions of paragraph (I) of this clause.
- G. No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds \$250.
- H. If the Subcontractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the subcontract price or was the basis of an increase in the subcontract price, the amount of the reduction shall be paid or credited to the Government of the United States/NREL as the NREL Subcontract Administrator directs.
- I. The Subcontractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, NREL, the

Subcontractor, any lower-tier subcontractor, or the transactions or property covered by this subcontract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

- J. The Subcontractor shall promptly notify the NREL Subcontract Administrator of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the NREL Subcontract Administrator directs. The subcontract price shall be equitably adjusted to cover the costs of action taken by the Subcontractor at the direction of the NREL Subcontract Administrator, including any interest, penalty, and reasonable attorneys' fees.

CLAUSE 23 - DESIGN WITHIN FUNDING LIMITATIONS (APR 1984)

Derived from FAR 52.236-22

(Applies to architect-engineer subcontracts)

- A. The Subcontractor shall accomplish the design services required under this subcontract so as to permit the award of a subcontract, using standard Federal Acquisition Regulation procedures for the construction of the facilities designed at a price that does not exceed the estimated construction subcontract price as set forth in the Subcontract Schedule or the Statement of Work. When bids or proposals for the construction subcontract are received that exceed the estimated price, the Subcontractor shall perform such redesign and other services as are necessary to permit subcontract award within the funding limitation. These additional services shall be performed at no increase in the price of this subcontract. However, the Subcontractor shall not be required to perform such additional services at no cost to NREL if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.
- B. The Subcontractor will promptly advise the NREL Subcontract Administrator if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the NREL Subcontract Administrator will review the Subcontractor's revised estimate of construction cost. NREL may, if it determines that the estimated construction subcontract price set forth in this subcontract is so low that award of a construction subcontract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction subcontract price set forth in the Schedule, or NREL may adjust such estimated construction subcontract price. When bids or proposals are not solicited or are unreasonably delayed, NREL shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

CLAUSE 24 - RESPONSIBILITY OF THE ARCHITECT-ENGINEER SUBCONTRACTOR (APR 1984)

Derived from FAR 52.236-23

(Applies to architect-engineer subcontracts)

- A. The Subcontractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Subcontractor under this subcontract. The Subcontractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

- B. Neither NREL's review, approval or acceptance of, nor payment for, the services required under this subcontract shall be construed to operate as a waiver of any rights under this subcontract or of any cause of action arising out of the performance of this subcontract, and the Subcontractor shall be and remain liable to NREL/Government in accordance with applicable law for all damages to NREL/Government caused by the Subcontractor's negligent performance of any of the services furnished under this subcontract.
- C. The rights and remedies of NREL/Government provided for under this subcontract are in addition to any other rights and remedies provided by law.
- D. If the Subcontractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

**CLAUSE 25 - WORK OVERSIGHT IN ARCHITECT-ENGINEER SUBCONTRACTS
(APR 1984)**

Derived from FAR 52.236-24

(Applies to architect-engineer subcontracts)

The extent and character of the work to be done by the Subcontractor shall be subject to the general oversight, supervision, direction, control, and approval of the NREL Subcontract Administrator.

CLAUSE 26 - REQUIREMENTS FOR REGISTRATION OF DESIGNERS (APR 1984)

Derived from FAR 52.236-25

(Applies to architect-engineer subcontracts)

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, in Puerto Rico, or in the District of Columbia.

CLAUSE 27 - BANKRUPTCY (JUL 1995)

Derived from FAR 52.242-13

(Applies to subcontracts exceeding \$100,000)

In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the NREL Subcontract Administrator responsible for administering the subcontract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this subcontract.

CLAUSE 28 - SUSPENSION OF WORK (APR 1984)

Derived from FAR 52.242-14

(Applies to construction and architect-engineer subcontracts)

- A. The NREL Subcontract Administrator may order the Subcontractor, in writing, to suspend, delay, or interrupt all or any part of the work of this subcontract for the period of time that the NREL Subcontract Administrator determines appropriate for the convenience of NREL/Government.

- B. If the performance of all or any part of the work is, for any unreasonable period of time, suspended, delayed, or interrupted--
1. By an act of the NREL Subcontract Administrator in the administration of this subcontract, or
 2. By the NREL Subcontract Administrator's failure to act within the time specified in this subcontract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this subcontract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the subcontract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Subcontractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this subcontract.
- C. A claim under this clause shall not be allowed --
1. For any costs incurred more than twenty (20) days before the Subcontractor shall have notified the NREL Subcontract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and
 2. Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the subcontract.

CLAUSE 29 - CHANGES - FIXED PRICE (AUG 1987)

Derived from FAR 52.243-1

- A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
1. Description of services to be performed.
 2. Time of performance (i.e., hours of the day, days of the week, etc.).
 3. Place of performance of the services.
 4. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for NREL/Government, in accordance with the drawings, designs, or specifications.
 5. Method of shipment or packing or supplies.
 6. Place of delivery.
- B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this subcontract, whether or not changed by the order,

the NREL Subcontract Administrator shall make an equitable adjustment in the subcontract price, the delivery schedule, or both, and shall modify the subcontract.

- C. The Subcontractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order. However, if the NREL Subcontract Administrator decides that the facts justify it, the NREL Subcontract Administrator may receive and act upon a proposal submitted before final payment of the subcontract.
- D. If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, the NREL Subcontract Administrator shall have the right to prescribe the manner of the disposition of the property.
- E. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

Alternate I (APR 1984)

(If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (A) for paragraph (A) of the basic clause:)

- A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
 - 1. Description of services to be performed.
 - 2. Time of performance (i.e., hours of the day, days of the week, etc.).
 - 3. Place of performance of the services.

Alternate II (APR 1984)

(If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (A) for paragraph (A) of the basic clause:)

- A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
 - 1. Description of services to be performed.
 - 2. Time of performance (i.e., hours of the day, days of the week, etc.).
 - 3. Place of performance of the services.

4. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for NREL/Government, in accordance with the drawings, designs, or specifications.
5. Method of shipment or packing of supplies.
6. Place of delivery.

Alternate III (APR 1984)

(If the requirement is for architect-engineer or other professional services, substitute the following paragraph (A) for paragraph (A) of the basic clause and add the following paragraph (F):

- A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in the services to be performed.

* * * * *

- F. No services for which an additional cost or fee will be charged by the Subcontractor shall be furnished without the prior written authorization of the NREL Subcontract Administrator.

Alternate IV (APR 1984)

(If the requirement is for transportation services, substitute the following paragraph (A) for paragraph (A) of the basic clause:)

- A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
 1. Specifications.
 2. Work or services.
 3. Place of origin.
 4. Place of delivery.
 5. Tonnage to be shipped.
 6. Amount of Government-furnished property.

Alternate V (APR 1984)

(If the requirement is for fixed price research and development, substitute the following subparagraphs (A) (1) and (A)(3) and paragraph (B) for subparagraphs (A)(1) and (A)(3) and paragraph (B) of the basic clause:)

- A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
 - 1. Drawings, designs, or specifications.
 - 3. Place of inspection, delivery, or acceptance.
- B. If any such change causes an increase or decrease in the cost of, or time required for, performing this subcontract, whether or not changed by the order, the NREL Subcontract Administrator shall make an equitable adjustment in--
 - 1. The subcontract price, the time of performance, or both; and
 - 2. Other affected terms of the subcontract, and shall modify the subcontract accordingly.

**CLAUSE 30 - LOWER-TIER SUBCONTRACTORS AND OUTSIDE ASSOCIATES
AND CONSULTANTS (ARCHITECT-ENGINEER SERVICES) (AUG 1998)**

Derived from FAR 52.244-4

Any lower-tier subcontractors and outside associates or consultants required by the Subcontractor in connection with the services covered by the subcontract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Subcontractor shall obtain the NREL Subcontract Administrator's written consent before making any substitution for these lower-tier subcontractors, associates, or consultants.

**CLAUSE 31 - SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL
COMPONENTS (OCT 1998)**

Derived from FAR 52.244-6

(Applies to solicitations and subcontracts for supplies or services other than commercial items)

- (a) Definitions.
 - "Commercial item," as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions. "Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(1) 52.222-26, Equal Opportunity (E.O.11246);

(2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C.4212(a));

(3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C.793);
and

(4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C.1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

CLAUSE 32 - PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)

Derived from FAR 52.247-63 (FD)

A. "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United states.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

B. Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government Contractors and Subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

C. The Subcontractor agrees, in performing work under this subcontract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

D. In the event that the Subcontractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Subcontractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): *(State reasons)*:

- E. The Subcontractor shall include the substance of this clause, including this paragraph (E), in each lower-tier subcontract or purchase under this subcontract that may involve international air transportation.

CLAUSE 33 - TERMINATION (FIXED PRICE ARCHITECT-ENGINEER) (APR 1984)

Derived from FAR 52.249-7 (FD)

- A. NREL may terminate this subcontract in whole or, from time to time, in part, for NREL's/Government's convenience or because of the failure of the Subcontractor to fulfill the subcontract obligations. The NREL Subcontract Administrator shall terminate by delivering to the Subcontractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Subcontractor shall--
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the NREL Subcontract Administrator all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this subcontract, whether completed or in process.
- B. If the termination is for the convenience of NREL/Government, the NREL Subcontract Administrator shall make an equitable adjustment in the subcontract price but shall allow no anticipated profit on unperformed services.
- C. If the termination is for failure of the Subcontractor to fulfill the subcontract obligations, NREL/Government may complete the work by subcontract or otherwise and the Subcontractor shall be liable for any additional cost incurred by NREL.
- D. If, after termination for failure to fulfill subcontract obligations, it is determined that the Subcontractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of NREL/Government.
- E. The rights and remedies of NREL/Government provided in this clause are in addition to any other rights and remedies provided by law or under this subcontract.

CLAUSE 34 - DEFAULT (FIXED PRICE SUPPLY AND SERVICE) (APR 1984)

Derived from FAR 52.249-8 (FD)

- A. 1. NREL may, subject to paragraphs (C) and (D) of this clause, by written notice of default to the Subcontractor, terminate this subcontract in whole or in part if the Subcontractor fails to --

- (i) Deliver the supplies or to perform the services within the time specified in this subcontract or any extension;
 - (ii) Make progress, so as to endanger performance of this subcontract (but see subparagraph (A)(2) of this clause); or
 - (iii) Perform any of the other provisions of this subcontract (but see subparagraph (A)(2) of this clause).
 - 2. NREL's right to terminate this subcontract under subdivisions (A)(1)(ii) and (iii) of this clause, may be exercised if the Subcontractor does not cure such failure within ten (10) days (or more if authorized in writing by the NREL Subcontract Administrator) after receipt of the notice from the NREL Subcontract Administrator specifying the failure.
- B. If NREL terminates this subcontract in whole or in part, it may acquire, under the terms and in the manner the NREL Subcontract Administrator considers appropriate, supplies or services similar to those terminated, and the Subcontractor will be liable to NREL/Government for any excess costs for those supplies or services. However, the Subcontractor shall continue the work not terminated.
- C. Except for defaults of subcontractors at any tier, the Subcontractor shall not be liable for any excess costs if the failure to perform the subcontract arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include--
- 1. Acts of God or of the public enemy;
 - 2. Acts of the Government in either its sovereign or contractual capacity;
 - 3. Fires;
 - 4. Floods;
 - 5. Epidemics;
 - 6. Quarantine restrictions;
 - 7. Strikes;
 - 8. Freight embargoes; and
 - 9. Unusually severe weather.
- In each instance the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor.
- D. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Subcontractor and lower-tier subcontractor, and without the fault or negligence of either, the Subcontractor shall not be liable for any excess costs

for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Subcontractor to meet the required delivery schedule.

- E. If this subcontract is terminated for default, NREL may require the Subcontractor to transfer title to the Government and deliver to NREL, as directed by the NREL Subcontract Administrator, any-
 - 1. Completed supplies, and
 - 2. Partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Subcontractor has specifically produced or acquired for the terminated portion of this subcontract. Upon direction of the NREL Subcontract Administrator, the Subcontractor shall also protect and preserve property in its possession in which the Government has an interest.
- F. NREL shall pay subcontract price for completed supplies delivered and accepted. The Subcontractor and NREL Subcontract Administrator shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. NREL may withhold from these amounts any sum the NREL Subcontract Administrator determines to be necessary to protect NREL/Government against loss because of outstanding liens or claims of former lien holders.
- G. If, after termination, it is determined that the Subcontract was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of NREL/Government.
- H. The rights and remedies of NREL/Government in this clause are in addition to any other rights and remedies provided by law or under this subcontract.

CLAUSE 35 - REFUND OF ROYALTIES (FEB 1995)

Derived from DEAR 952.227-9 (FD)

- A. The subcontract price includes certain amounts for royalties payable by the Subcontractor or lower-tier subcontractors or both, which amounts have been reported to the DOE through NREL.
- B. The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this subcontract or any lower-tier subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this subcontract or the copying of such data or data that is copyrighted.
- C. The Subcontractor shall furnish to the DOE through NREL, before final payment under this subcontract, a statement of royalties paid or required to be paid in connection with performing this subcontract and lower-tier subcontracts hereunder together with the reasons.

- D. The Subcontractor will be compensated for royalties reported under paragraph (C) of this clause, only to the extent that such royalties were included in the subcontract price and are determined by the DOE to be properly chargeable to the Government and allocable to the subcontract. To the extent that any royalties that are included in the subcontract price are not, in fact, paid by the Subcontractor or are determined by the DOE not to be properly chargeable to the Government and allocable to the subcontract, the subcontract price shall be reduced. Repayment or credit to the Government shall be made as the DOE directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.
- E. If, at any time within three (3) years after final payment under this subcontract, the Subcontractor for any reason is relieved in whole or in part from the payment of the royalties included in the final subcontract price as adjusted pursuant to paragraph (D) of this clause, the Subcontractor shall promptly notify the DOE through NREL of that fact and shall reimburse the Government in a corresponding amount.
- F. The substance of this clause, including this paragraph (F), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

CLAUSE 36 - INSPECTION IN ARCHITECT-ENGINEER SUBCONTRACTS (APR 1994)

Derived from DEAR 952.236-71

(Applies to architect-engineer subcontracts)

NREL/Government, through any authorized representatives, have the right at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by NREL/Government on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall provide and shall require his lower-tier subcontractor to provide all reasonable facilities and assistance for the safety and convenience of NREL/Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

CLAUSE 37 - FOREIGN TRAVEL (FEB 1997)

Derived from DEAR 952.247-70 (FD)

- A. Foreign travel, when charged directly, shall be subject to the prior approval of the NREL Subcontract Administrator for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada, Mexico, and the United States and its territories and possessions.
- B. Request for approval shall be submitted at least forty-five (45) days prior to the planned departure date, be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed soviet-bloc travel.

**CLAUSE 38 - INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO
WORK PLANNING AND EXECUTION (JUN 1997)**

Derived from DEAR 970.5204-2 (FD)

(Applies to subcontracts that involve complex or hazardous work that is to be performed on a Government-owned or -leased facility.)

- A. For the purposes of this clause,
1. "Safety" encompasses environment, safety, and health, including pollution prevention and waste minimization; and
 2. "Employees" include Lower-tier subcontractor employees.
- B. In performing work under this subcontract, the Subcontractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety, and health (ES&H) functions and activities becomes an integral but visible part of the Subcontractor's work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that:
1. Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and lower-tier subcontractor employees managing or supervising employees performing work.
 2. Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
 3. Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
 4. Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 5. Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 6. Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
 7. The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by NREL/Government and the Subcontractor. These agreed-upon conditions and requirements are requirements of the subcontract and binding

upon the Subcontractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

- C. The Subcontractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (B) of this clause at a minimum. Documentation of the System shall describe how the Subcontractor will:
 - 1. Define the scope of work;
 - 2. Identify and analyze hazards associated with the work;
 - 3. Develop and implement hazard controls;
 - 4. Perform work within controls; and
 - 5. Provide feedback on adequacy of controls and continue to improve safety management.
- D. The System shall describe how the Subcontractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Subcontractor will measure system effectiveness.
- E. The Subcontractor shall submit to the NREL Subcontract Administrator documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the NREL Subcontract Administrator. Guidance on the preparation, content, review, and approval of the System will be provided by the NREL Subcontract Administrator. On an annual basis, the Subcontractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Subcontractor's business processes for work planning, budgeting, authorization, execution, and change control.
- F. The Subcontractor shall comply with, and assist the DOE in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this subcontract on Laws, Regulations, and DOE Directives. The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this subcontract.
- G. The Subcontractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Subcontractor fails to provide resolution or if, at any time, the Subcontractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the NREL Subcontract Administrator may issue an order stopping work in whole or in part. Any stop work order issued by a NREL Subcontract Administrator under this clause (or issued by the Subcontractor to a lower-tier subcontractor in accordance with paragraph (I) of this clause) shall be without prejudice to any other legal or contractual rights of NREL/Government. In the event that the NREL Subcontract Administrator issues a stop work order, an order authorizing the resumption of the work may be

issued at the discretion of the NREL Subcontract Administrator. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

- H. The Subcontractor is responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.
- I. The Subcontractor shall include a clause substantially the same as this clause in lower-tier subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such lower-tier subcontracts shall provide for the right to stop work under the conditions described in paragraph (G) of this clause. Depending on the complexity and hazards associated with the work, the Subcontractor may require that the lower-tier subcontractor submit a Safety Management System for the Subcontractor's review and approval.

CLAUSE 39 - ACCOUNTS, RECORDS, AND INSPECTION (JUN 1996)

Derived from DEAR 970.5204-9 (FD)

A. Accounts.

The Subcontractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, revenues or other applicable credits, fixed-fee accruals, and the receipt, use and disposition of all Government property coming into the possession of the Subcontractor under this subcontract. The system of accounts employed by the Subcontractor shall be acceptable to NREL/Government and in accordance with generally accepted accounting principles consistently applied.

B. Inspection and Audit of Accounts and Records.

All books of account and records relating to this subcontract shall be subject to inspection and audit by NREL/Government at all reasonable times, before and during the period of retention provided for in (D) below, and the Subcontractor shall afford proper facilities for such inspection and audit.

C. Audit of Subcontractors' Records.

The Subcontractor also agrees, with respect to any lower-tier subcontracts (including fixed price or unit-price lower-tier subcontracts or purchase orders) where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the lower-tier subcontractor's costs or arrange for such an audit to be performed by the cognizant Government audit agency through the NREL Subcontract Administrator.

D. Disposition of Records.

Except as agreed upon by NREL and the Subcontractor, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable, revenues, and other applicable credits under this subcontract, shall be the property of the Government, and shall be

delivered to NREL or otherwise disposed of by the Subcontractor either as the NREL Subcontract Administrator may from time to time direct during the progress of the work or, in any event, as the NREL Subcontract Administrator shall direct upon completion or termination of this subcontract and final audit of accounts hereunder. Except as provided in this subcontract, all other records in the possession of the Subcontractor relating to this subcontract shall be preserved by the Subcontractor for a period of three (3) years after final payment under this subcontract or otherwise disposed of in such manner as may be agreed upon by NREL/Government and the Subcontractor.

E. Reports.

The Subcontractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this subcontract as the NREL Subcontract Administrator may from time to time require.

F. Inspections.

NREL/Government shall have the right to inspect the work and activities of the Subcontractor under this subcontract at such time and in such manner as it shall deem appropriate.

G. Lower-tier Subcontracts.

The Subcontractor further agrees to require the inclusion of provisions similar to those in paragraphs (A) through (G) and paragraph (I) of this clause in all lower-tier subcontracts (including fixed price or unit price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the lower-tier subcontractor.

(The following paragraph (H) shall be included in--

- 1. All cost-type subcontracts (or lower-tier subcontracts) involving an estimated cost exceeding \$5 million and expected to run more than two (2) years, and*
- 2. Any other cost-type subcontract (or lower-tier subcontract) where deemed advisable by the DOE Head of the Contracting Activity and when the Subcontractor (or lower-tier subcontractor) already has an established internal audit organization.)*

H. Internal Audit.

The Subcontractor agrees to conduct an internal audit and examination satisfactory to NREL/Government of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this subcontract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the NREL Subcontract Administrator.

I. Comptroller General.

1. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder.

2. This paragraph may not be construed to require the Subcontractor or lower-tier subcontractor to create or maintain any record that the Subcontractor or lower-tier subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
3. Nothing in this subcontract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this subcontract.

CLAUSE 40 - PRINTING CLAUSE FOR SUBCONTRACTS (APR 1984)

Derived from DEAR 970.5204-19 (FD)

- A. To the extent that duplicating or printing services may be required in the performance of this subcontract, the Subcontractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.
- B. The term "Printing" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this subcontract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.
- C. Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.
- D. In all lower-tier subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations), the Subcontractor shall include a provision substantially the same as this clause.

CLAUSE 41 - PERMITS OR LICENSES (APR 1984)

Derived from DEAR 970.5204-29

Except as otherwise directed by the NREL Subcontract Administrator, the Subcontractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this subcontract is performed.

CLAUSE 42 - ACCESS SECURITY (SPECIAL)(APR 1999)

- A. Access to NREL operated facilities is controlled in accordance with the DOE's requirements. The Subcontractor shall ensure that any of its, or its lower-tier subcontractors, officers, employees, or agents be specifically authorized site access by an NREL employee, and identified, badged, and registered by NREL Security prior to entering any NREL operated facility.

- B. The Subcontractor shall further ensure that any of its, or its lower-tier subcontractors, officers, employees, or agents who are not U.S. citizens or U.S. permanent residents and who will perform subcontract work on NREL operated facilities for a total of thirty (30) calendar days or greater, or who are citizens of a DOE designated sensitive country, or who work for a company based in a sensitive country, or who are stateless persons, submit a completed DOE Form IA 473 to NREL six to eight weeks before access is required. Access shall be subject to DOE approval. Any such person denied access by DOE shall not be assigned by the Subcontractor to work at NREL operated facilities.
- C. The Subcontractor shall provide to the Subcontract Administrator, prior to the initiation of work, evidence, including visa types and expiration dates, that legally sufficient work permits have been obtained from the U.S. Immigration and Naturalization Service, and such permits are properly maintained, for any of its, or its lower-tier subcontractors officers, employees, or agents who are not U.S. citizens or U.S. permanent residents and who will perform subcontract work at NREL operated facilities.
- D. Further, after the Subcontractor, or its lower-tier subcontractors, has commenced subcontract work, the Subcontractor shall provide to the Subcontract Administrator similar advance notice, including visa types and expiration dates, for all subsequently assigned individuals who are not U.S. citizens or U.S. permanent residents who will perform subcontract work at NREL operated facilities.
- E. NREL reserves the right to revoke site access authorization for any person violating NREL or DOE safety and security policies and procedures.
- F. As a condition of entry to NREL premises, the Subcontractor agrees to permit NREL security personnel to search its, and its lower-tier subcontractors, officers, employees, or agents vehicles, packages, tool boxes, or other containers for the purpose of preventing prohibited articles access to NREL premises or to detect or deter the unauthorized removal of Government property from NREL.
- G. Prohibited articles include cameras, copying machines, reproduction devices, recording devices, radio transmitters, firearms, explosive devices, incendiary devices, dangerous weapons or materials, controlled substances (illegal drugs), or alcoholic beverages.
- H. The Subcontractor shall include this article, including this Paragraph H, in all lower-tier subcontracts involving work at NREL operated facilities.